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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In re Application of  
DIXIE BROADCASTING, INC.

For Renewal of Licenses of  
Stations WHOS(AM)/WDRM(FM)  
Decatur, Alabama

To: Honorable Arthur I. Steinberg )  
Administrative Law Judge )

MM Docket No. 92-207

File Nos. BR-881201XN  
BRH-881201XO

ORIGINAL  
FILE

MOTION FOR SUMMARY DECISION

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### SUMMARY

Dixie Broadcasting, Inc. ("DBI"), licensee of Stations WHOS(AM) and WDRM(FM), Decatur, Alabama (the "Stations"), hereby moves for summary decision pursuant to Section 1.251(b) of the Commission's Rules with respect to the Misrepresentation Issue and the EEO Program Issue designated against it in this proceeding.<sup>1/</sup>

With respect to the Misrepresentation Issue, there is no genuine dispute as to the material facts and summary decision in favor of DBI is warranted. The record reflects that DBI's misstatement on two occasions as to the number of hires during the License Period resulted from a good faith misunderstanding on the part of DBI's attorneys and the failure of Mack Bramlett, the Stations' general manager and DBI's vice president and 10% stockholder, to catch the mistake. Admittedly, Mr. Bramlett, in the exercise of reasonable care, should have caught the misstatement and corrected it. The record is devoid, however, of any evidence of an intent or a motive to deceive. Indeed, DBI voluntarily disclosed the inaccuracy which led to the specification of the issue. Under these circumstances, even though DBI's conduct was less than exemplary, there is absolutely no basis for a finding that DBI intentionally engaged in misrepresentation or lacked candor.

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<sup>1/</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the attached Motion for Summary Decision.

With respect to the EEO Program Issue, DBI does not dispute that it failed to comply with the requirements of Section 73.2080(b) of the Commission's Rules. The record reflects that DBI did not engage in consistent recruitment efforts or maintain adequate records to permit a meaningful self-assessment of its EEO Program. DBI did, however, affirmatively attempt to recruit and hire qualified minorities. DBI's hiring results substantially exceeded the Commission's 50% of parity guidelines. Under these circumstances, DBI acknowledges that some sanction would be warranted.

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Decatur, Alabama )  
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To: Honorable Arthur I. Steinberg )  
Administrative Law Judge

MOTION FOR SUMMARY DECISION

Dixie Broadcasting, Inc. ("DBI"), licensee of Stations WHOS(AM) and WDRM(FM), Decatur, Alabama (the "Stations"), by its attorneys and pursuant to Section 1.251 of the Rules of the Federal Communications Commission ("Commission" or "FCC"), hereby requests the Presiding Judge to grant summary decision with respect to the issues designated against it in the above-referenced proceeding and to grant DBI's applications for the renewal of the licenses of the Stations.

INTRODUCTION

1. On December 1, 1988, DBI filed applications for the renewal of the licenses of the Stations (File nos. BR-881201XN and BRH-881201XO) (the "Renewal Applications"). On March 1, 1989, a "Petition to Deny" the Renewal Applications were filed by Region V of the NAACP and the National Black Media Coalition (the "Petition"). DBI filed an "Opposition to Petition to Deny" (the "Opposition") on April 14, 1989. Thereafter, between July 1989

and February 1992, the Commission conducted a Bilingual<sup>1/</sup> investigation into the EEO practices of the Stations, consisting of a series of written and oral inquiries and responses thereto by DBI. On February 3, 1992, DBI and the NAACP filed a Joint Request for Approval of Settlement Agreement ("Joint Request") based upon an agreement entered into between them on January 22, 1992, resolving the allegations in the Petition.

2. By Hearing Designation Order (FCC 92-391) released September 3, 1992 ("HDO"), the Commission granted the Joint Request,<sup>2/</sup> but, as a result of its Bilingual investigation, designated the Renewal Applications for hearing on the following issues:

(1) To determine whether the licensee of Stations WHOS(AM)/WDRM(FM) made misrepresentations of fact or was lacking in candor and violated Section 73.1015 of the Commission's Rules, 47 C.F.R. Section 73.1015, with regard to the station's [sic] EEO program and documents submitted in support thereof (the "Misrepresentation Issue");

(2) To determine the extent to which the licensee of Stations WHOS(AM)/WDRM(FM) complied with the affirmative action provisions specified in Section 73.2080(b) (the "EEO Program Issue");

(3) To determine whether, in light of evidence adduced pursuant to the foregoing issues, a grant of the subject license renewal applications would serve the public interest, convenience and necessity.

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<sup>1/</sup> Bilingual - Bicultural Coalition on the Mass Media, Inc. v. FCC, 595 F.2d 621 (D.C. Cir. 1978) ("Bilingual").

<sup>2/</sup> NBMC was not a party to the settlement agreement or the Joint Request. NBMC was denied standing against the Stations in the HDO at paragraph 4.

3. A prehearing conference was held on October 21, 1992. In accordance with the Presiding Judge's instructions in his Order Prior to Prehearing Conference (FCC 92M-948) released September 14, 1992, discovery was completed prior to December 15, 1992. Discovery consisted of: (a) the "Mass Media Bureau's Request for Admissions of Facts and Genuineness of Documents," filed October 2, 1992 (the "Admissions Request"); (b) the "Mass Media Bureau's Request for Production of Documents," filed November 5, 1992 (the "Document Request"); and (c) depositions taken by the Mass Media Bureau of (i) G. Mack Bramlett on November 24, 1992 (cited herein as "M. Bramlett Depn."), (ii) Rebecca B. Bramlett on November 24, 1992 (cited herein as "R. Bramlett Depn."), (iii) Susan A. Marshall on December 4, 1992 (cited herein as "Marshall Depn.") and (iv) Daniel F. Van Horn on December 11, 1992 (cited herein as "Van Horn Depn. ").

4. Pursuant to Section 1.251(a) of the Commission's Rules, a motion for summary decision must be filed no later than 20 days prior to the date set for the commencement of the hearing. The hearing is scheduled to commence on February 23, 1993; therefore the deadline for filing a motion for summary decision is Friday, January 8, 1993. See Order (FCC 92M-1104) released December 28, 1992. This Motion is accordingly timely filed.

5. As is demonstrated below, the material facts in this case are not in dispute. Thus, no purpose would be served by a

hearing. Summary decision -- with its attendant cost and time savings -- should accordingly be granted.

### PROLOGUE

6. In evaluating the actions or failures to act of J. Mack Bramlett ("Mr. Bramlett") in this case his state of mind must be taken into account. First, Mr. Bramlett believed EEO requirements dealt with discrimination. He hired Blacks, he has Black friends and he provides assistance to Black broadcasters and Black businessmen in the area. He does not discriminate. Therefore, when the Petition to Deny was filed, he was hurt and expended all his efforts thereafter until late in 1991 to prove that he hired minorities and that he did not discriminate. He never focused on the total number of hires until December 1991; he just focused on minority hires. He now understands that his mindset was not correct but that was his mindset. There was certainly no mens rea involved. Second, the Stations are Mr. Bramlett's whole life and have been for twenty-some years. His wife wishes they would go on vacations but essentially she can't get him to take half an afternoon off and the few times they went anywhere he would go with a telephone in one ear and a tape in the other; he has tapes of Station programs so he can listen to them when he leaves the area. The radio is on in every room in the house and Mr. Bramlett listens to the Stations all night. He



is devoted to the operation of his Stations. (R. Bramlett Depn. at 32-33)<sup>3/</sup>

## **I. STATEMENT OF FACTS**

### **A. The Stations.**

7. The Stations are a family-run business. Mr. Bramlett has worked at the Stations full time since 1962, when he took his first job out of school as the Stations' Chief Engineer. Since 1976, Mr. Bramlett has been the full time General Manager of the Stations, and Vice President, director and 10% voting stockholder of DBI.<sup>4/</sup> As such, Mr. Bramlett has had supervisory responsibility over all facets of the Stations' day-to-day operations, including hiring and firing, programming, engineering, sales and compliance with FCC rules and regulations, including those pertaining to EEO. During the period 1982 to February 1989 (the "License Period"), Mr. Bramlett oversaw the operation of the Stations himself; there were no separate department heads, other than a national sales manager, Mark Goodwin, starting in the fall of 1986. Mr. Bramlett devoted most of his waking hours to this

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<sup>3/</sup> These facts are more fully developed in the Statement of Facts, below, and insofar as record citations are not provided in this Prologue, they will be provided in the Statement of Facts.

<sup>4/</sup> There is pending with the Commission an application for transfer of control of the Stations which, if approved, would ultimately result in Mr. Bramlett becoming a 50% voting stockholder of the licensee of the Stations. (HDO at paragraph 1, note 1; M. Bramlett Depn. at 6-7.)

task and rarely took vacations. (M. Bramlett Depn. at 7-11; B. Bramlett Depn. at 26, 32-33.)

8. Mr. Bramlett's wife, Rebecca B. Bramlett ("Mrs. Bramlett"), worked at the Stations from 1978 until 1983 on a part-time basis, and from 1983 until June 1991 on a full-time basis, as her husband's assistant, performing bookkeeping and payroll duties, aiding in the preparation of the Stations' annual employment reports and the Renewal Applications, and otherwise helping her husband as requested. (B. Bramlett Depn. at 5-8; M. Bramlett Depn. at 20-22.) Mr. Bramlett's son, Timothy, also worked at the Stations as a full time announcer from August 1986 through August 1989 and his son, Jim, has worked at the Stations since 1988. (Admissions Request, Attachment J, Exhibit 1.) Other children of Mr. Bramlett, and a daughter-in-law, have worked at the Stations as well. (Admissions Request, Attachment J; M. Bramlett Depn. at 132.)

9. Beginning sometime in 1984 or 1985, the Stations' communications lawyer was Daniel F. Van Horn of the law firm of Arent Fox Kintner Plotkin & Kahn ("Arent Fox"). Mr. Van Horn commenced employment with Arent Fox as an associate in 1979 and became a partner on January 1, 1986. He practiced communications law and dealt with EEO matters throughout his tenure at Arent Fox, and worked in non-communications areas as well. Mr. Van Horn left Arent Fox in April 1992 and has been an Assistant United States Attorney in the District of Columbia since May 11, 1992. (Van Horn Depn. at 3-6, 8-9.) Susan A. Marshall, a senior

attorney at Arent Fox, also worked on DBI matters under Mr. Van Horn's supervision, primarily with respect to the Bilingual inquiry and the preparation of the Opposition, commencing in early 1989. Ms. Marshall became associated with Arent Fox in 1978. She practices communications law and deals with EEO matters involving broadcast clients. (Marshall Depn. at 5-7.)

**B. The EEO Program.**

10. The Stations are licensed to Decatur, Alabama, which is located in Morgan County and is not a part of any Metropolitan Statistical Area ("MSA").<sup>5/</sup> The relevant work force in evaluating the Stations' employment profile during the License Period is therefore Morgan County. According to 1980 United States Census data, the civilian labor force in Morgan County was 39.8% female and 7.4% Black, with other racial minorities represented in statistically insignificant numbers. (Admissions Request, Attachment A, Exhibit 1.)

11. DBI hired 140 individuals to work at the Stations during the License Period. Eighty-three of these hires were considered by DBI to be "employees" for FCC purposes. (Admis-

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<sup>5/</sup> In 1988, a new MSA was created by Congress consisting of Morgan County and part of adjacent Lawrence County. This MSA was not created by the U.S. Census Bureau, however, and is therefore not reflected in U.S. Census data. Because the FCC relies on the U.S. Census as the source of its labor force data, DBI also relied on U.S. Census data and thus utilized Morgan County as its frame of reference for local civilian work force data. (Admissions Request, Attachment A, Exhibit 1.)

sions Request, Attachment J.) DBI did not consider the remaining 57 people to be employees. They included (a) 21 individuals hired on a permanent basis who were asked to leave their employment after a 60 to 90-day probationary period because they were found to be unqualified for the positions for which they were hired, and (b) 36 individuals hired as independent contractors on a purely temporary or "fill-in" basis who were not intended to work on a permanent basis. (Id.) The FCC has held that the 21 probationary employees should be deemed employees for FCC purposes, so that there were 104 employees hired by DBI during the License Period. (HDO at paragraph 12, note 10.)

12. Nine of the 140 (6.43%) individuals hired by DBI during the License Period were Black.<sup>6/</sup> Eight of the 104 (7.69%) "employee" hires were Black.<sup>7/</sup> (Admissions Request, Attachment K, Exhibit 1.) All Blacks were hired for upper-four positions.

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<sup>6/</sup> They are Nathan Tate, Sr. (full time sales manager/manager), Bruce Hill (full time announcer/professional), Ricky Patton (full time sales/announcer/sales worker), Alfred Hardy (part time announcer/professional), Carla Snell (full time news reporter/professional), Willie Acklin (part time announcer/professional), Bernard Powell (part time announcer/professional), Gwen Stephenson (full time office manager/manager) and Kathy Jordan (full time public affairs director/manager). (Admissions Request, Attachment K, Exhibit 1.)

<sup>7/</sup> Willie Acklin was properly described as a non-employee temporary hire in the Opposition. (Opposition at paragraph 12.) Through inadvertence, he was incorrectly listed as an employee in Exhibit 1 to DBI's February 11, 1992 submission to the FCC. (Admissions Request, Attachment K, Exhibit 1.) Additionally, the Opposition, which was based in large part on the recollection of DBI's staff, listed only seven minority hires during the License Period. DBI's February 11, 1992 submission, which was based upon payroll records, listed two additional minority hires.

Id. During the License Period, Mr. Bramlett also offered upper-four positions at the Stations to two Blacks (Carol Washington/public affairs director and Renita Jimmar/sales) and offered a promotion to one Black, Nathan Tate, Sr., from sales manager to general manager. (Opposition at 6-7, 10; M. Bramlett Depn. at 30.)

13. Mr. Bramlett was responsible for establishing and implementing the Stations' EEO Program during the License Period. (M. Bramlett Depn. at 12-13.) The Stations' EEO policy was informal; it was implemented by Mr. Bramlett so there were no formal procedures for others to follow. (Id.) Throughout the License Period, Mr. Bramlett made an effort to obtain minority applicants and to employ minorities and was keenly focused on being nondiscriminatory with respect to job openings. (Id. at 12-13, 30, 46-47.) Recruitment sources relied upon throughout the License Period on an irregular basis included Broadcasting Magazine, Radio and Records, Decatur Daily, Huntsville Times, University of Alabama, A & M College, National Career College, Manpower, Inc., local Black leaders and employee referrals. (Admissions Request, Attachment H, Exhibit 1.) Mr. Bramlett did not, however, maintain complete records of the Stations' recruitment efforts. Mr. Bramlett did retain certain EEO-related records, such as some job applications of minorities with respect to the period 1986-1988. But as a rule, job applications were kept for six to 12 months and then discarded. No written record was maintained as to the race of job applicants because Mr.

Bramlett understood it was against the law to do so. (M. Bramlett Depn. at 26-27, 40-41, 46, 93.)

14. In the early part of the License Period, from 1982 to the beginning of 1986, WDRM(FM) (the "FM Station") was a station with a small coverage area serving a population of approximately 50,000 in Decatur and Morgan County. It was not a desirable place to work, especially for experienced radio people. (Id. at 15-16.) Decatur and Huntsville, a larger municipality approximately 25 miles away, were two different markets. The going hourly rate for employees at radio stations was \$3.25 in Decatur and \$4.00 in Huntsville. (Id. at 28-29.)

15. During the period 1982 to 1986, most job openings for on-air positions at the Stations presented a crisis situation. Job openings needed to be filled immediately because DBI was unable to maintain a staff large enough to fill vacancies while a search was conducted for a replacement. (Id. at 18-19.) When an announcer left the station, a warm body was needed immediately to fill his next shift. Replacements were usually found from an ever changing group of people who regularly contacted the Stations to ascertain whether there were any job openings or Mr. Bramlett would just "grab someone off the street." In either case, due to the nature of the Stations, the replacement was usually inexperienced in radio or announcing; someone who just wanted to try it out. Such a situation often resulted in the replacement leaving on his own accord in short order when it became apparent he was unable to do the job. (Id. at 31-32, 48.)

On occasion in the early part of the License Period newspaper advertisements were run announcing job openings, but this was the exception rather than the rule. (Id. at 27, 31-32, 45-47.)

16. Recruitment of salespersons and other staff persons, other than announcers, during this period was mostly accomplished through networking and station personnel, although newspaper advertisements and other notices were used as well. (Id. at 28, 36-37.) Mr. Bramlett sought out minorities from the minority community based on networking efforts and his personal knowledge. (Id. at 14.) In 1982 Mr. Bramlett hired Nathan Tate, Sr., a Black male who was well known in the local Black community, as the Stations' sales manager. When Mr. Tate was preparing to leave the Stations in 1983, Mr. Bramlett offered him the General Manager's position, which he declined. During Mr. Tate's tenure at the Stations, word of job openings was circulated by him throughout the Black community. (Id. at 30, 33-35.) Mr. Tate referred Bruce E. Hill in 1982 and Willie Acklin in 1983, each of whom were Black males hired by the Stations. (Opposition at 7-8.)

17. Mr. Bramlett believes the Stations' EEO program improved beginning in 1986. The impetus for this improvement was an upgrade of the FM Station's facilities and a relocation of its transmitter site closer to Huntsville in January 1986. As a result of this move, the FM Station's signal covered three counties and 350,000 people and the FM Station became better known and a more desirable place to work. (M. Bramlett Depn. at

14-18.) As a result of the FM Station's expanded coverage area and new-found appeal, job advertisements were placed in Huntsville newspapers for the first time, including a local Black publication, job announcements were sent to A&M, a Black college, and better results were obtained. Prior to this time, recruitment efforts had not as a rule extended to Huntsville because it was a different market, the Stations were not well known there and Huntsville residents were unlikely to work in Decatur. (Id. at 14-18, 28-29.)

18. Another by-product of the Stations' enhanced image was better pay, with a resultant decrease in job turnover and an improvement in the quality and dedication of the staff. (Id. at 41-43.) Because existing staff or on-call fill-in workers were increasingly available to fill vacancies on a temporary basis, the Stations were better able to keep vacancies open over a longer period of time while a less hurried search was undertaken for qualified applicants -- there was time to utilize a "hiring window." (Id. at 37-42.)

19. Mr. Bramlett evaluated the effectiveness of the Stations' EEO program on an ongoing informal basis throughout the License Period. He judged the effectiveness of his EEO efforts by whether or not minority applicants were produced. (Id. at 27-28.) Mr. Bramlett believed the Stations' EEO program was very effective because of its results: DBI hired a number of Blacks in a community where no other stations hired any Blacks. (Id. at 27; Opposition at note 10, pages 10-11, and Exhibit B.)



20. DBI has had a formalized EEO program since 1989 modeled after the National Association of Broadcasters ("NAB") guidebook which Mr. Bramlett ordered when he first saw it offered. (M. Bramlett Depn. at 115-116.) Mr. Bramlett remains ultimately responsible for the establishment and implementation of the program, but his son, Jim, is the assistant EEO officer. The Stations' national sales manager is responsible for advertising job openings. Job announcements are sent to over 20 places. Upon receipt of a job application, the applicant is sent a data form that includes minority information. The form is filed upon receipt and Mr. Bramlett never sees it. Mr. Bramlett reviews recommended applications and decides whom he will interview. (Id. at 22-23.) Copies of all job applications are retained by DBI. (Id. at 40-41.)

21. Prior to the publication of the NAB guidebook in 1989, Mr. Bramlett read the trade press and maybe an Arent Fox memo regarding EEO obligations. He found counsel's instructions too complicated to follow. He did not ask communications counsel, the NAB or the Alabama Broadcasters Association how to implement a more formal EEO program, nor did he attend any seminars or conventions on this topic. (Id. at 23-26.) On or about the time of the filing of the Renewal Applications, however, Mr. Bramlett did briefly discuss with Mr. Van Horn in general terms the need to implement a more formalized program. (Id. at 111-116; Van Horn Depn. at 13-15.) Mr. Bramlett does not remember whether the

formal program was implemented before or after the Petition was filed. (M. Bramlett Depn. at 24-25.)

22. Except for 1982, the Annual Employment Reports during the License Period were prepared in draft form by Mrs. Bramlett and reviewed by Mr. Bramlett. In preparing the drafts, Mrs. Bramlett would review the payroll records for the two-week period covered by the report in question, prepare a list of employees covered, categorize the employees as best she could in accordance with the Annual Employment Report's instructions and then show the draft report to her husband. In the earlier part of the License Period, the reports were then typed up, signed and mailed to the Commission. After Arent Fox began representing DBI, the executed reports were usually sent to Mr. Van Horn for his review before they were filed. (B. Bramlett Depn. at 27-30; M. Bramlett Depn. at 20-21, 99-107.)

**C. The Petition to Deny and Bilingual Investigation.**

23. On December 1, 1988, the Renewal Applications, including the Broadcast Equal Employment Opportunity Report dated November 23, 1988 (the "Form 396"), were filed with the Commission. (Admissions Request, Attachment A.) The Form 396 reflects, among other things, that there were 16 total hires during the 12-month period from November 1, 1987 to November 2, 1988 (the "Reporting Year") and that two of these hires were for positions in the upper four job categories. (Id.) Both of these figures proved to be incorrect. As noted below, in the Opposition the number of the hires during the Reporting Year was

changed from 16 to 12. (Opposition at note 5.) In addition, ten, not two, of these 12 hires were for positions in the upper four job categories. (Admissions Request, Attachment K, Exhibit 1.) (B. Bramlett Depn. at 23-25.)

24. The NAACP and the NBMC filed the Petition to Deny on March 1, 1989. The petitioners alleged, based upon a review of the Stations' Annual Employment Reports and the Form 396, that the Stations failed to employ any minorities and failed to implement an adequate EEO program during the license term. (Petition at p. 6.) The petitioners therefore urged the Commission to conduct a Bilingual investigation into the Stations' EEO record. (Id.)

25. Mr. Bramlett learned of the filing of the Petition from Mr. Van Horn. Mr. Bramlett reacted viscerally. He understood the Petition to allege that he was a racist and guilty of discrimination. (M. Bramlett Depn. at 30-31.) He was hurt and offended. (M. Bramlett Depn. at 30; B. Bramlett Depn. at 25; Marshall Depn. at 20-21; Van Horn Depn at 31-32.) Based upon his mindset, Mr. Bramlett believed the Stations' EEO program was very effective because the Stations had employed many minorities. (M. Bramlett Depn. at 27, 80.) He set out immediately to gather evidence to prove that the Stations had employed minorities during the License Period. Mr. Bramlett, his wife, his son, Jim, and Mark Goodwin, the Stations' national sales manager since 1986, met to search their collective recollections and the few records available to identify minority hires during the License

Period. Mr. and Mrs. Bramlett separately devoted a substantial amount of time and effort to this issue over the next couple of days both at work and at home. A list was prepared setting forth the minority hires and was telecopied to Mr. Van Horn for use in connection with the preparation of the Opposition. (M. Bramlett Depn. at 50-51, 70-71, 93; B. Bramlett Depn. at 8; Marshall Depn. at 14-15, 18, 28.) Mr. Bramlett's sole focus in responding to the Opposition and subsequent FCC inquiries was to demonstrate that he was not a racist<sup>8/</sup> and that the Stations had not discriminated. (M. Bramlett Depn. at 80-81, 128-129.)

26. The text of the Opposition was drafted by Ms. Marshall based upon information contained in the Stations' Annual Employment Reports, the Form 396 and minority hiring information supplied by Mr. Bramlett. (Marshall Depn. at 14, 17-28, 74-75.) A draft of the Opposition was first reviewed and edited in a non-substantive manner by Mr. Van Horn, then forwarded to Mr. Bramlett for his review. (Van Horn Depn. at 24-25; Marshall

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<sup>8/</sup> Nat Tate, Sr., President of the NAACP in Morgan County and organizer of several NAACP chapters in the area, at one time was on the staff of the Stations, and Mr. Bramlett continues to provide him with help and information, consultation, anything that could be helpful in his business ventures. Their acquaintance and friendship goes back some 28 years and they visit on a social as well as a professional basis. Hundley Batts is a Black man who owns a radio station in Hunstville. Mr. Bramlett has consulted with him sharing sales and recruiting techniques among other things. Ricky Patton and Terrel Newby are two Blacks whom Mr. Bramlett has helped in their businesses and with whom he has maintained a continuing relationship for many years. (M. Bramlett Depn. at 126-128.)

Depn. at 74.) The Opposition was filed with the FCC on April 14, 1989.

27. In the Opposition, DBI discussed (a) its minority recruitment efforts and overall hiring record during the Reporting Year and thereafter through February 1989 (at pages 3-7), and (b) its minority recruitment efforts and minority hiring record during the balance of the License Period (at pages 7-11). In doing so, DBI corrected certain inaccuracies in earlier EEO-related FCC filings. Specifically, DBI noted that there were 12 hires during the Reporting Year, not 16 as had been reported in the Form 396. Four persons who had worked at the Stations as independent contractors, not employees, were improperly included in the "new hire" total. (Opposition at note 5.) This mistake was discovered by Mr. Bramlett in the course of the preparation of the Opposition. (Marshall Depn. at 24.) DBI also noted that three minority employees -- Nat Tate, Bruce E. Hill and Ricky Patton -- had been omitted by oversight from the Stations' 1983 Annual Employment Report and that a fourth minority employee -- Gwendolyn Stephenson -- had been omitted from the 1987 Annual Employment Report because the Report, which was not prepared correctly, failed to provide the requisite racial breakdown. (Opposition at note 10.) These discrepancies were discovered by Ms. Marshall when she compared the minority hiring information supplied by Mr. Bramlett with the Stations' Annual Employment Reports. The explanations for the discrepancies were provided by Mr. Bramlett. (Marshall Depn. at 20-22.)

28. By letter dated July 3, 1989 (the "July 3 Letter") from Glenn A. Wolfe, Chief of the FCC's EEO Branch, to Mr. Bramlett, Mr. Wolfe stated there was "insufficient information to make a determination that efforts were undertaken to attract minority applicants whenever there were job openings" and therefore requested the following categories of information for "each position filled" during the three-year period from November 1, 1985 to November 1, 1988: "job title, 395-B job classification, the full or part-time status of the position, the date the position was filled, the referral sources contacted, the number of persons interviewed (indicating those that were minority and female), and the referral source, gender and race or national origin (e.g., Hispanic) of the successful candidate." A copy of this letter was sent to Mr. Van Horn. (Admissions Request, Attachment B; Van Horn Depn. at 35.)

29. The July 3 Letter was probably received by Mr. Van Horn before Mr. Bramlett. (Van Horn Depn. at 36.) Mr. Bramlett had one conversation with Mr. Van Horn or Ms. Marshall, probably Mr. Van Horn, concerning the letter and DBI's response. (Van Horn Depn. at 36-37, 42; M. Bramlett Depn. at 54-58; Marshall Depn. at 31-33.) Mr. Bramlett believes that one brief conversation took place before he received a copy of the letter, although he does not remember the specifics of the conversation. (M. Bramlett Depn. at 54-58.) Mr. Van Horn has some recollection of such a conversation with Mr. Bramlett. According to Mr. Van Horn, the letter asked for specific statistical information which he

understood the Stations did not have because the pertinent documents had been lost or destroyed. (Van Horn Depn. at 37-39, 41-43.)

30. By letter dated July 28, 1989 from Mr. Van Horn to Donna R. Searcy, Secretary of the FCC (the "July 28 Letter"), DBI responded to the July 3 Letter by submitting a copy of the Opposition and stating that "[t]he information requested by Mr. Wolfe's office is contained in the text of the Opposition."

(Admissions Request, Attachment C.) Mr. Van Horn, referring to himself as a "bumbling idiot," acknowledges that the foregoing statement was not drafted as carefully as it should have been. The statement should have read: "The information requested by Mr. Wolfe's office, to the extent available, is contained in the text of the Opposition." (Van Horn Depn. at 67-68.)

31. No communications between the FCC and DBI occurred with respect to the Stations' EEO program for the next 18 months. Then, on or about February 20, 1991, Hope G. Cooper, a staff person in the FCC's EEO Branch, telephoned Ms. Marshall regarding the information submitted with the July 28 Letter. (Admissions Request, Attachment E.) This conversation was followed by a letter dated March 15, 1991, from Mr. Wolfe to Mr. Bramlett (the "March 15 Letter"). (Id.) The March 15 Letter was characterized as a "follow up" to the February 20 conversation between Ms. Cooper and Ms. Marshall. The letter read in pertinent part:

In your inquiry response, you provided information only for positions for which you considered and/or hired minorities. However,

we requested recruitment and hiring information for all full-time and part-time hires during the reporting period. Because we do not have enough information to determine whether sufficient efforts were undertaken to attract Black applicants when job openings occurred, we are again requesting the following information.

The letter went on to request the same seven categories of information requested in the July 3 Letter for each position filled during the one-year period November 1, 1987 to November 1, 1988.<sup>9/</sup> This was different in scope from the July 3 Letter, which covered the three-year period November 1, 1985 to November 1, 1988. (Admissions Request, Attachments B and E.)

32. Ms. Marshall does not recall the specific conversation with Ms. Cooper on February 20, 1991, although she does recall that as a general matter each letter from the FCC received in connection with this project was preceded by a telephonic inquiry from Ms. Cooper. (Marshall Depn. at 33-34.) When Ms. Marshall first received the March 15 Letter, she noticed that it was similar to letters sent to other clients seeking additional EEO information. She thought it unusual, however, that the letter only sought information with respect to the one-year period from November 1, 1987 to November 1, 1988. In her experience, most letters of a similar ilk from the FCC covered periods of three years or more. (Id. at 33-36.)

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<sup>9/</sup> The HDO at paragraph 9 incorrectly describes the period covered by the March 15 Letter as a three-year period.



33. It was Ms. Marshall's understanding at the time she received the March 15 Letter that the information included in the Opposition was all the information available to DBI, with respect to the Reporting Year and the License Period, that was responsive to the categories of information requested in the March 15 Letter. This understanding was based upon her recollection that in preparing the Opposition "we had gotten as much information as we could from Mr. Bramlett because he didn't have complete records." (Id. at 35.) This understanding was also based upon her review of the July 3 Letter, which requested the same categories of information as the March 15 Letter for the three-year period November 1, 1985 to November 1, 1988, and the July 28 Response thereto, which merely resubmitted the Opposition and provided no additional information. (Id. at 33-38). Ms. Marshall recalls talking to Mr. Bramlett in the course of preparing DBI's response to the March 15 Letter and mentioning it was unusual that the Commission had just asked for one year's worth of information. (Id. at 36-38.)

34. Mr. Bramlett recalls speaking with Ms. Marshall about the March 15 Letter two or three times before he actually received a copy of it. He remembers Ms. Marshall telling him that the information sought only covered the one-year period from November 1, 1987 to November 1, 1988. In response to Ms. Marshall's question, he said he had nothing more to add with respect to that time period. He thought the information sought had already been provided in the Opposition. The balance of his